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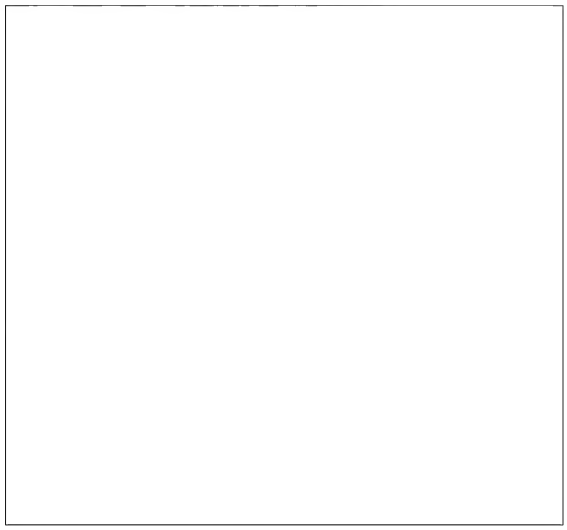

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House Acts on Intelligence Identities Protection Bill

The House of Representatives debated and passed H.R. 4, the Intelligence Identities Protection Act (amending the National Security Act of 1947) as amended on the floor during debate on September 23. The vote was 354 to 56. But some strange things happened on the way to passage.

The major point of controversy between H.R. 4 and its companion bill in the Senate, S.391, lies in Sec. 601(c). This section (different from Secs. 601(a) and (b), where authorized access to classified information on identities of covert agents is an element of the crime), would provide criminal penalties for any person (including those who have never had authorized access to classified matter), who discloses the identity of covert agents with the intent to impair or impede U. S. foreign intelligence activities. The elements of the crime in Sec. 601(c) were carefully crafted in both S.391 and H.R. 4 in order to meet constitutional tests.

The major differences with regard to Sec. 601(c) were that H.R. 4 (as reported from committee) utilized an "intent" standard for prosecution, whereas S.391 employs a "reason to believe" standard. Further, S.391 requires that the exposure of identities be "in the course of a pattern of activities" by the defendant.

Most of the knowledgeable witnesses who testified before the House Permanent Select Committee on Intelligence urged passage of H.R. 4 (in its reported state) if for no other reason than to bring the bill to the floor. However, the Department of Justice expressed a preference for S.391, because the intent standard under H.R. 4 would make prosecution very difficult from an evidentiary standpoint. Director of Central Intelligence Casey also wrote Committee Chairman Boland on July 15 to emphasize the administration's preference for S.391. Further support was noted in President Reagan's letter of September 14 to Senator East urging reporting out S.391 without amendment. The president noted that any change in S.391 "would have the effect of altering this carefully-crafted balance. I cannot overemphasize the importance of this legislation."

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"to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the United States," would require the prosecution also to prove that the disclosure of the identity of a covert agent actually did impair or impede our foreign intelligence activities. The security implications of trial proof and discovery under this element are appalling.

The Association of Former Intelligence Officers (AFIO), through its legal advisor, John S. Warner, immediately labelled this new development for what it felt it was—a "results test," and it sent a strong letter of concern to House Intelligence Committee Chairman Boland (D-Mass.). AFIO also pointed out other matters of concern in the committee report. In a reply dated September 16, the chairman asked that AFIO representatives meet with his staff to help resolve the differences and denying any committee intent to consider the added words a "results test."

On September 21, Jack Maury, President of AFIO, John Warner, and Walter Pforzheimer of the AFIO Executive Committee, met with Michael O'Neil, the committee chief counsel, and a member of his staff. While the committee staff continued to deny that the new wording in Sec. 601(c) constituted a "results test" or any desire to create such an element, it was agreed that this could best be resolved for the legislative history of H.R. 4 by a colloquy during the floor debate. Such a colloquy took place between Subcommittee Chairman Mazzoli (D.-Ky.) and Rep. McClory (R.-Ill.), in which the former concluded:

> "In sum, Sec. 601(c) is only concerned with what a person intends in making a disclosure, not in what may or may not have been the result of his having done so.

In reporting H.R. 4, the overwhelming majority of House Intelligence Committee members voted in support of the bill as reported. They were very anxious to bring "Identities" legislation to the floor; and they wished to avoid a second sequential referral of H.R. 4 to the Judiciary Committee, with its attendant delays. The language of H.R. 4 was satisfactory to the Judiciary Committee. Only Rep. John Ashbrook (R.-Ohio) took a dissenting position in the committee report, noting a strong preference for the language of S.391 in